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USAID Implementation of Construction Activities

A Mandatory Reference for ADS Chapters 303

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BACKGROUND: USAID is funding construction projects in all regions across all foreign assistance objectives. USAID infrastructure investments range from small-scale projects such as community water tanks to large power plants and water treatment facilities. USAID also makes direct infrastructure investments in schools, hospitals, health clinics, and other public buildings, as well as rural farm to market roads, trunk roads, and bridges. The Agency's infrastructure projects are a critical component of our development programs in post-conflict and post-disaster countries but are not limited to those situations.

The use of contracts and task orders to manage both the design and construction of infrastructure projects allows the Agency to specify that engineering requirements including design, tendering, and construction oversight activities, as well as safety or other operational construction standards/specifications are met. In contrast, the agreement conditions with grantees under assistance awards minimizes the Agency's ability to ensure that the design and construction activities are carried out properly.

Operating Units (OUs) and Agreement Officers (AOs)/Contracting Officers (COs) must be aware of this policy as it applies to the program and acquisition planning phase of USAID projects.

POLICY: This document states the Administrator-approved policy limiting the use of assistance awards to implement construction activities. "Construction activities" for purposes of this policy are defined in Section IV. Definitions.

I. Applicability

The construction policy is applicable to all funds with the exception of those funds provided through

- a. A government-to-government agreement (e.g., a Fixed Amount Reimbursement Agreement);
- b. A Development Credit Authority instrument under [ADS 249, Development Credit Authority \(DCA\)](#); and
- c. Grants under [ADS 308, Awards to Public International Organizations](#), to Public International Organizations or grants to other bilateral donors.

Effective Date: The policy applies to all solicitations, awards, and modifications or amendments to existing awards that authorize new activities not already authorized under such awards issued after the effective date of April 3, 2012.

II. Types of Instruments for Construction Activities

a. Acquisition

USAID must use a direct contract (including a task order) when:

- The award is solely for construction; or
- The award includes construction activities as some portion of all award activities, and

- (1) The estimated cost of construction activities at a single project site is \$500,000 or more, or
- (2) The total aggregate estimated cost of construction activities under the award is \$10,000,000 or more.

Where construction activities are financed under contracts, COs are strongly encouraged to use firm fixed price contracts to the greatest extent possible.

b. Assistance

(1) USAID may use an assistance award to finance construction activities only when all of the following conditions apply:

- i. The award is a cooperative agreement (CA), since greater oversight is possible through substantial involvement by USAID (see ADS **303.3.11**). Construction must not be financed under a grant;
- ii. The construction activities are only a portion of all award activities and
 1. The estimated cost of construction activities at a single project site is less than \$500,000 (see definition of single project site below); and
 2. The total aggregate estimated cost of construction activities under the award is less than \$10,000,000.
- iii. The CA complies with the requirements of [ADS 221, USAID's Procedures for Implementing International Agreements for Tied and Untied Aid](#);
- iv. Construction activities are explicitly stated in the budget;
- v. The CA expressly states that no construction activities other than those explicitly approved under the agreement may be performed as part of the cooperative agreement;
- vi. A term of substantial involvement provides the right of the Agreement Officer's Representative (AOR) to halt construction; and

AOs must not approve any amendments or modifications to the cooperative agreement or subawards or procurements by recipients for construction activities that increase the value of construction activities above the limits established in item b.(1)ii above.

(2) For any assistance awards under which construction activities are not permitted by the above policy, AOs must not approve any subawards or procurements by recipients for construction activities.

(3) AOs must ensure that Mandatory Standard Provision "Limiting Construction Activities" is included in all awards. When no construction activities are contemplated under the award, the AO must insert "Construction is not eligible for reimbursement under this award" in section d) of this provision. In those awards under which construction activities are permitted by the above policy

or as authorized by waiver, the AO must insert the description and location(s) of the specific construction activities in section d) of the provision. The AO must also ensure that there is a specific line item for construction activities in the award budget.

III. Requests for Waivers or Additional Exceptions

a. The Procurement Executive (PE), in consultation with the Director, EGAT/I&E, may approve requests to increase the value of construction activities above the limits stated in item b. above or approve additional exceptions or waivers from this policy on a case-by-case basis. OUs must submit written requests for waivers through the AO to M/OAA/Policy addressing the following:

- (1) A description of the construction activities included in the program activities, broken down by type, site and estimated cost; and
- (2) The impact to USAID's programmatic and foreign assistance objectives that compliance with the policy will otherwise cause.

b. Waivers are currently granted for the offices and activities listed below.

- (1) Construction activities carried out under Food for Peace for disaster relief (including that using program income and monetized proceeds);
- (2) Construction activities carried out by DCHA/OTI through Grants Under Contracts (e.g., Support Which Implements Fast Transition contract or SWIFT) to the extent current practice is maintained;
- (3) Construction activities conducted by DCHA/OFDA;
- (4) Construction activities carried out by the West Bank/Gaza Mission; and
- (5) Construction activities conducted by DCHA/ASHA.

IV. DEFINITIONS:

“Construction” for purposes of this policy means: construction, alteration, or repair (including dredging and excavation) of buildings, structures, or other real property and includes, without limitation, improvements, renovation, alteration and refurbishment. The term includes, without limitation, roads, power plants, buildings, bridges, water treatment facilities, and vertical structures.

“Direct USAID contract awards” for purposes of this policy means a contract awarded pursuant to the FAR, AIDAR, and [ADS 302, USAID Direct Contracting](#), and does not include grants, cooperative agreements, or other transactions, including without limitation, a grant/cooperative agreement awarded pursuant to [ADS 303, Grants and Cooperative Agreements to Non-Governmental Organizations](#), a grant under a contract, a procurement contract under a

grant/cooperative agreement, a Global Development Alliance, etc.

“Improvements, renovation, alteration and refurbishment” for purposes of this policy includes any betterment or change to an existing property to allow its continued or more efficient use within its designed purpose (renovation), or for the use of a different purpose or function (alteration). Improvements also include improvements to or upgrading of primary mechanical, electrical, or other building systems. “Improvements, renovation, alteration and refurbishment” does NOT include non-structural, cosmetic work, including painting, floor covering, wall coverings, window replacement that does not include changing the size of the window opening, replacement of plumbing or conduits that does not affect structural elements, and non-load bearing walls or fixtures (e.g., shelves, signs, lighting, etc.).

“Modifications or amendments” as used in this policy refer to changes in scope or refinements of work plans that include activities not previously carried out by an assistance recipient.

“Single project site” for purposes of this policy means a single undertaking of construction within a contiguous geographic location, including but not limited to, a road, a building, a wastewater treatment facility, a power plant, a school, a clinic, etc., but also includes contiguous multiples of the same.